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In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 758.

NATIONAL AIRLINES, INC.,
Petitioner,

v.

THELMA SCHOLNIK,
Respondent.

PETITIONER'S REPLY BRIEF
In Support of Petition for Writ of Certiorari.

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June 1, 1955.

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The judgment below rests on the premise *Green*, 205 U. S. 530, and *McKibbin*, 243 U. S. 264, "are no longer a correct statement of law." (Appendix to petition, p. 29.)

Respondent, however, resists review on the theory that "such a holding was unnecessary to the decision of this case because the facts are such that even under *Green* and *McKibbin*, National is present and suable in Ohio." (Respondent's brief, p. 12.)

The factual argument respondent here renews was urged to the court below. But the Court of Appeals held:

> "It [petitioner, National Airlines] operates no flights into the State of Ohio and maintains no office in Ohio." (App., p. 23.)

The court recognized that the facts here brought the case within *Green* and *McKibbin*. The court noted:

> "In such cases, the Supreme Court ruled that such activities by a connecting carrier within the jurisdiction did not confer jurisdiction over the foreign corporate carrier who, although receiving benefits therefrom did not itself operate within the state." (App., pp. 27-28.)

But the court declined to follow those decisions because—

> "We are of the opinion that the rule applied in the *Green* and *McKibbin* cases has been materially changed by later decisions of the Supreme Court." (App., p. 28.)

Thus the critical point on which this case turns—a point on which the district courts the country over are at odds—is whether

> "the earlier rulings of the Supreme Court in the *Green* and *McKibbin* cases are no longer a correct statement of the law." (App., p. 29.)

On the assumption these cases are not to be followed, the Court of Appeals reversed.

There will, to be sure, as respondent suggests, always be borderline cases.

But when the rule of law is left in doubt, confusion is complete. Accordingly, until this Court speaks, district courts will continue to decide cases, some applying one rule, some another.

The debate as to the applicable rule only this Court can quiet.

Until it does, the confusion now existing—where district courts in one-fourth of the states adhere to a rule at odds with that declared below—is bound to mount.

The Court should grant the writ.

Respectfully submitted,

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EDWARD D. CROCKER,
Attorneys for Petitioner.

June 1, 1955.
Cleveland, Ohio.